Déjà Vu: Eerie Similarities Between the Congolese and Kenyan Elections

On Thursday, January 24, Felix Tshisekedi became the fifth president of the Democratic Republic of the Congo (DRC). Like many others in the region’s recent history, his was a contested victory, its legitimacy marred by suspicion regarding a range of issues throughout the electoral cycle, as well as by damming evidence that his main competitor, Martin Fayulu, another opposition candidate, was the true victor.

Tshisekedi’s inauguration, delayed for three days as controversy over the legitimacy of the results raged, was notable for significant gaps in attendance. The powerful Catholic Church, whose observers disputed the legitimacy of Tshisekedi’s victory, was absent. Representatives of Fayulu’s coalition also declined to be present. The European Union merely “noted” the result, and the African Union, usually reluctant to express any serious disagreement with members’ official results, also declined to congratulate Tshisekedi.

There was one foreign dignitary there, though: Kenyan President Uhuru Kenyatta. His lone presence was striking, a vivid reminder of the contention that has marked all four of the elections in which he has participated. Indeed, from his vantage point in the audience, President Kenyatta may have experienced a case of déjà vu. It is, after all, difficult to look past the multiple similarities that marred both of the most recent Congolese and Kenyan election cycles.

In addition to a slew of irregularities in the lead-up to election day, civil society and opposition candidates in both countries provided hard evidence of important variations between official announced outcomes and what had been shown to the public. In both cases, electoral victories did not correspond to election results.

It is now possible to “win” elections without garnering the most votes; democratic elections have given way to electoral coups.

Hope deferred
The most recent Congolese and Kenyan electoral cycles began in a charged atmosphere, alive with hope and anticipation of change. In the DRC, the 2018 election was a long-awaited milestone: it marked the end of Joseph Kabila’s 18-year rule and was a first chance for the transfer of political power through democratic means. Despite ongoing violence and instability in some parts of the country, as well as Kabila’s moves to ensure his continued influence the country’s politics, citizens were highly engaged. In fact, the Catholic Church (CENCO) mobilised and deployed more than 40,000 observers around the country in a rigorous observation exercise.

Vibrant campaigns were also inspiring, and two of the three leading candidates were opposition figures. Two days before the election, one of them – Martin Fayulu – was polling with 47 per cent of voters’ support, almost double that of the next most popular candidate, opposition candidate Felix Tshisekedi. New York University’s Congo Research Group described the results as indicative of an electorate “eager for change.”

In 2017, Kenya’s citizens were similarly hopeful. Months of street protests, civil society advocacy campaigns, court battles and a joint parliamentary review of electoral administration had reformed significant parts of the electoral process. In fact, hard-won, new leadership at the Independent Electoral and Boundaries Commission (IEBC), more fully integrated biometric voter registration and identification kits, rules requiring the IEBC to honour polling station-level results, and the creation of an online portal promising to show results forms in real time had renewed public faith in the credibility of the electoral process.

In both contexts, though, hope quickly eroded as it became clear that key parts of the electoral cycle had been taken over by power-hungry elites who used the trappings of elections to engineer their own “victories”.

State violence
Although a broad array of technical irregularities contributed to low electoral integrity in the DRC and Kenya, it is critical to remember that the state’s use of violence to intimidate, threaten and silence the public’s questioning and criticism exerted an insidious influence over the entirety of both processes.

In Kenya, the violent repression of peaceful protesters began as early as 2016, when security forces descended on anti-IEBC demonstrators. In 2017, the electoral cycle was bloodily punctuated by incidents that included the murder of infants and violent house-to-house operations in opposition areas.

In the DRC, the United Nations High Commissioner for Human Rights expressed concern over reports of the state’s use of excessive force, including live bullets, against opposition rallies. Human Rights Watch also reported the state’s use of arbitrary detention of opposition party activists, the firing of teargas and live ammunition to break up largely peaceful opposition rallies, and the closing of an international border to prevent a presidential aspirant from filing candidacy papers. Six months before election day, ongoing repression prompted the Catholic Church to write to the African Union. Its letter described “a crisis of confidence” in the electoral process.

The use of state-sanctioned violence indicated the authorities’ complete unwillingness to engage with the people; it was clear that elections would not be fair.

**Voter registration**

It was clear from early on in the process that something was amiss. In fact, registration processes in both countries revealed how deeply problematic political and logistical contexts – both of which presented significant challenges to inclusive processes – cast an early pall on the legitimacy of elections. In the DRC, rebel groups attacked DRC electoral commission (CENI) officials and attempted to prevent certain groups from registering. CENI itself was accused of incompetence, discriminating against certain ethnic groups, and accepting bribes in return for illegal registrations. In Kenya, certain minorities described their struggles to obtain the national identity cards that are necessary for voter registration, a process which has taken some individuals upwards of five years. Research revealed that “special vetting procedures,” which essentially ensured that IDs would not be processed, are discriminatorily applied to ethnic minorities.
Registration was also marred by the continued use of the much-maligned “green book” and an audit that used sub-standard methodology and that failed to make its full report publicly accessible.

When the final voters’ rolls were released, there were more problems. In the DRC, an audit of the voter register revealed that the records of more than 6.5 million voters (16.6 per cent) lacked all ten fingerprints. It was reminiscent of the 2013 Kenyan election, when a “special list” of approximately 36,000 registered voters, also lacking fingerprints, appeared during the Supreme Court trial challenging the integrity of the election. In both cases, the election commission had failed to be forthright about the existence of such lists. In the DRC, five political parties demanded that voters lacking fingerprints be removed from the rolls altogether; protesters agreed. In 2017, the Kenyan voter register was similarly contentious, marked by the presence of, for example, more than a million records of deceased voters, thousands of incorrect records, and tens of thousands of duplicate records.

The courts

The Congolese and Kenyan processes both concluded with court cases challenging election results, and in both cases there was suspicion of serious executive interference. In the DRC, the Constitutional Court, made up of Kabila’s close allies, dismissed Fayulu’s petition as “unfounded” and claimed that it had failed to prove any inaccuracies in the results. The Court’s ruling was made in spite of widely reported evidence that Fayulu had won 60 per cent of the vote.

In Kenya, the Supreme Court boldly nullified the results of the August election. Its decision hinged on evidence of fraudulent forms and the IEBC’s refusal to comply with court orders that it open its servers for inspection. Although the petitioners in the October repeat election case also demonstrated evidence of irregular forms and differences between the IEBC’s “official” results and what the Commission
had posted on the public portal, the Supreme Court ruled that there was insufficient evidence.

This ruling came after President Kenyatta made his intentions with regard to the Court clear. In fact, in the aftermath of the nullification, he publicly referred to the judges as “crooks” and promised to “revisit” the judiciary. Insecurity heightened days before the fresh election in October, when Deputy Chief Justice Mwilu’s driver was shot and seriously wounded. One day before the election, Chief Justice David Maraga announced that the Court, which had failed to achieve quorum, would be unable to hear a case that sought to postpone the elections.

By exerting influence over the judiciary, the state not only protected certain elites’ victories, it also controlled the narrative, establishing a certain amount of legitimacy around what would otherwise be a questionable result at best.

**Equipment**

The use of electoral technology also tainted both elections. In the case of Kenya, post-election investigations have made it clear that technology was little more than a tool for elites’ personal enrichment. Procurement scandals tainted the reliability of the equipment as well as its immunity to external hacking and interference. The reliability of digital systems became even more doubtful when, days before the August election, the IEBC’s head of IT was found murdered; his case has yet to be solved. Indeed, it was unsurprising when the electronic results transmission failed – just as it had in 2013 – and the IEBC once again turned to the manual collection of more than 40,000 paper forms from around the country.

In the DRC, voters were also suspicious of technology. In fact, public protests called for authorities to abort the idea. Days before the election, a fire destroyed 70 per cent of the machines slated to be used in Kinshasa; authorities suspected arson. CENI’s decision to use such technology, especially in light of poor infrastructure to support it, was questionable. In Kenya, the IEBC even attempted (unsuccessfully) to justify its abandonment of the results transmission system by claiming that the lack of 3G connectivity in some locations made it impossible for the system to work.

What has become apparent is that technology, while claiming to increase the credibility of elections, actually does more to build a wall between electoral processes and the voters. In fact, the complexity of digital systems makes them
inherently inaccessible to the average voter. It is thus easier for manipulation to occur and go undetected.

**Voting and results**

Kenya and the DRC also restricted voting altogether for some citizens. In the DRC, roughly **1.2 million** voters in three opposition strongholds were barred from casting their ballots because of health risks and security threats. In Kenya, voting in the October presidential election was first postponed and then cancelled altogether in 27 constituencies; nine per cent of registered voters were thus disenfranchised.

The last straw in both cases, however, was the state of the results. In the DRC, the powerful Catholic Church deployed more than 40,000 observers to polling stations across the country and found that election day was marred by the delayed opening of polling stations, the establishing of stations in prohibited areas, and problems with voting machines. It also scrutinised results forms, finding that Fayulu won 60 per cent of the vote, making him the clear victor. The African Union and the European Union both “noted” Tshisekedi’s apparent victory, pointedly choosing to withhold any congratulations.

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Kenya’s domestic observers also found multiple problems on the day of the election—in August and in October — including delayed opening of polling stations, insufficient materials in the stations, violence, malfunctioning voter identification kits, and problems with reliability of the voter register. These issues were compounded by evidence of highly questionably polling station forms, which were rife with errors. Forms featured mathematical inconsistencies, missing information, altered figures, the lack of IEBC signatures, and irregular printing. In fact, petitioners’ scrutiny of October results forms revealed that the IEBC’s “official” forms differed from forms that had been posted on the public portal and submitted to petitions as part of the Supreme Court case. Although these problems were sufficient for the Court to nullify the August elections, the Court
ruled that there was insufficient evidence to annul the October polls.

Clearly, results have little value anymore.

**Reclaiming elections**

It is time for citizens to reclaim elections and the democratic power that comes through the polls. For far too long, the state has been in control of a process that is, at its heart, about the people.

First, it is critical for voters to demand some basic minimum standards of election administration. This begins with a clear and verifiable record of results. In Kenya, the IEBC has failed to publish polling station-level results for any of the elections it has overseen, leaving the public without the means to analyse, understand, and validate their own votes. In the DRC, CENI has yet to publish polling station-level results.

Election results go hand in hand with voter registration details. In the aftermath of the August election, Kenya’s IEBC announced voter registration totals that differed from the officially gazetted totals; civil society questions about the differences remain unanswered. In the aftermath of the October repeat election, a summation of the county-level numbers of registered voters again showed differences. Public demands for greater transparency should start here; resulting questions and clarification will reveal the way forward in terms of urgent reforms.

Second, a re-engaged citizenry should think deeply about what elections mean and how to modify laws and practice to shape polls into participatory, meaningful exercises. This kind of evaluation begins with and is based upon the premise that elections are not a privilege; they are universal rights and it is the state’s duty to facilitate voters’ access to and participation in them.

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If voters understand elections as public services, as part of what governments owe their citizens, they may understand the importance of rethinking the status quo. This means questioning the very nature of political interaction. Elections do not have to be divisive, dangerous affairs that include “zoning,” hate speech and
highly unequal playing fields. In fact, a shift away from the first-past-the-post could incentivise and encourage politicians to broaden their support bases and adopt more moderate political platforms. In the long term, such a system could help bring voters on extreme ends of political divides closer together.

Third, citizens should demand more from their elected representatives. In an age of advanced digital technology and increasingly diverse ways of being in touch, the public may be able to interact with representatives on a more regular basis, questioning decisions and tracking things like parliamentary voting patterns. Such tools could enhance accountability and arm voters with better information for their future voting decisions. Widespread use of such tools could also result in more policy-oriented parties.

Finally, citizens can and should be proactive about claiming their space throughout the electoral process. This may involve watching and questioning things like boundary delimitation, voter registration and decisions about the use of technology. The more questions people raise over time, the greater the chances that electoral processes will become easier to understand and more transparent.

Votes matter; it’s time to make sure that results do, too.